IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3822 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF JADEJA TAKHATSINH KESARISINH

Versus

STATE OF GUJARAT

Appearance:

MR BJ JADEJA for Petitioners

Mr K G Sheth, AGP for M/S PATEL ADVOCATES for Respondent No. 1

RULE SERVED for Respondent No. 2

MR ND NANAVATI for Respondent No. 4, 5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/11/2000

C A V.JUDGEMENT

The petitioners above named have preferred this petition under Article 227 of the Constitution of India

for appropriate writ, order or direction for quashing and setting aside the judgment and order at Annexure 'C' passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.R. 43/86 confirming the orders at Annexures 'A' and 'B' passed by the learned Mamlatdar, Kalavad and Dy.Collector, Jamnagar respectively.

2. It appears that deceased Jadeja Takhatsinh Kesarisinh died on 17.1.1956. He left behind him his widow i.e. petitioner no.1 and 5 daughters. At the time of his death, he had 66 Acres and 18 Gunthas of land at village Bedia in Jamnagar District. The first petitioner had submitted relevant material before the Mamlatdar and the Ceiling Case No.109/76 was conducted by the Mamlatdar & ALT who decided the same on 19.8.1982, under which the learned Mamlatdar directed that out of the aforesaid land, a piece of land admeasuring 18 Acres and 18 gunthas be treated to be surplus. The said matter was carried in appeal and Revision time and again and ultimately the matter has been decided finally by the Gujarat Revenue Tribunal in Revision Application No.TEN.D.R-43/86 which was disposed of by the Revenue Tribunal on 28.2.1992. Under the said judgment and order, the learned Tribunal dismissed the said Revision Application of the petitioners meaning thereby that the original order of the Mamlatdar treating the said land as surplus has been confirmed finally by the Gujarat Revenue Tribunal as aforesaid. It appears that in the meantime, the matter was dealt with by different authorities from time to time. The matter was once remanded by the tribunal also. I am not very much concerned with those details. The fact remains that ultimately, the tribunal has accepted the aforesaid order of the Mamlatdar and has confirmed his order declaring the aforesaid land as surplus.

3. Feeling aggrieved by the aforesaid judgment and order of the learned Tribunal, the petitioners have preferred this petition before this court. It has been mainly contended here that the learned tribunal has not properly appreciated the legal and factual aspects that the position is that the deceased died in the year 1956 and the Land Ceiling Act was brought into force w.e.f. 1.4.1976. That on the date on which the Act was brought into force, four daughters of the deceased were married and one was not married. That therefore, it could not be said that there was only one family and one unit on the date on which the said Act was brought into force. That in fact one family did not remain in existence after the death of the deceased. It has also been contended that the four sisters were married and there was one widow and one unmarried daughter at the time when the said Act was

brought into force and thus, it cannot be said that one family remained to be the owner of the said land and, therefore, under the aforesaid facts and circumstances of the case, the learned Tribunal has committed error in holding that there was only one family and, therefore, the said family was not entitled to occupy the land admeasuring more than 48 acres. That therefore, the learned tribunal has further committed error in accepting and confirming the order of the Mamlatdar declaring the aforesaid land of 18 acres and 18 gunthas to be surplus under the said law. That therefore, the orders of the revenue authorities including the orders of the tribunal are illegal and they deserve to be quashed and set aside. The petitioners have, therefore, filed this petition for the aforesaid relief.

4. On receipt of the petition, Rule was issued and ad-interim relief was granted in terms of para 11 (C) of the petition. Mr K G Sheth, learned AGP has appeared on behalf of the respondents in response to the service of rule. I have heard M/s. B J Jadeja, learned Advocate for the petitioners and Mr K G Sheth learned AGP for the State. I have also perused the papers.

5. It is not at all in dispute that the deceased owner of the aforesaid land - Jadeja Takhatsinh Kesarisinh died on 17.1.1956. It is also not in dispute that at the time of his death, he had no son but he left behind his widow and 5 daughters. It is also not much in dispute that the Gujarat Agricultural Land Ceiling Act, 1960 was brought into force and at that time four daughters were married and one was unmarried. These factual aspects are totally not in dispute at the time when the matter was argued by Mr B J Jadeja and Mr K G Sheth.

6. The question would arise at to whether there remained one family after the death of the deceased and at the time when the aforesaid Act was brought into force.

7. Now, it is well settled that on the death of a male Hindu, there would be notional partition between the heirs and legal representatives of the said deceased Hindu. If that is so, then on the death of deceased Takhatsinh there would be notional partition between the widow and her five daughters. Therefore, it would not be treated to be one family, in the eye of law at the time when the said Act was brought into force. Moreover, it is an admitted position that four daughters had married at the time when the said Act came into force. They were

staying with their in-laws at that point of time. Only the widow and one unmarried daughter were staying together when the said Act came into force. In that view of the matter, it has been contended at length that it could not be said that there was one family entitling to only one unit only.

8. The respondents have not filed any affidavit and have not made things clear from their side. In that view of the matter, it is clear that it was not a matter of one family. Every separate heir of the deceased would be entitled to additional unit and if that is considered, then it could not be said that there was surplus land of 18 acres and 18 gunthas. Learned AGP was not in a position to answer the aforesaid points raised by the petitioners. In the above view of the matter, when it could not be said that there was only one family at the time when the said Act had come into force, there was no question of surplusage of land and, therefore, the orders passed by the learned Mamlatdar and confirmed by the learned tribunal declaring the land as surplus have to be treated to be illegal.

9. Even if separate unit is given to the widow, then also the aforesaid land could not be treated to be surplus. On the other hand, if separate units are given to the married daughters, then also the said land would not be treated to be surplus. In that view of the matter, considering the facts and circumstances of the case, I am of the view that the learned AGP was not in a position to support the judgment of the learned tribunal and consequently, the same is required to be quashed and set aside. In other words, it has to be accepted that the learned Mamlatdar, Dy.Collector and the learned Tribunal all have committed error in holding that the aforesaid land was surplus. Therefore, the said orders are required to be quashed and set aside.

10. In the result, this petition is allowed. The orders passed by the learned Mamlatdar & ALT, Kalavad and confirmed by the Dy.Collector, Jamnagar as well as by the Gujarat Revenue Tribunal holding that there was surplus land of 18 acres and 18 gunthas from the land left behind by deceased Takhatsinh Jadeja are quashed and set aside. The respondents are prevented from implementing and enforcing the said orders against the petitioners.

Rule is accordingly made absolute. In the facts and circumstances, no order as to costs.

[D P Buch, J.]

msp